

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF JAMES ARTHUR § No. 117, 2009
BIGGINS FOR A WRIT OF §
MANDAMUS §

Submitted: March 30, 2009

Decided: April 9, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 9th day of April 2009, it appears to the Court that:

(1) The petitioner, James Arthur Biggins, a prison inmate, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to issue service of process in a civil case he filed on August 1, 2008 and to award him damages sustained while waiting for his complaint to be served. The State of Delaware has filed an answer requesting that the petition be dismissed. We find that Biggins' petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

(2) The record reflects that, on August 1, 2008, Biggins filed a complaint in the Superior Court against nineteen individual prison officials and medical personnel on the ground that they had acted with deliberate

¹ Del. Const. art. IV, § 11(6); Supr. Ct. R. 43.

indifference to his serious medical needs in violation of the Eighth Amendment of the United States Constitution. The Superior Court docket reflects that, on January 16, 2009, Biggins wrote to the Prothonotary inquiring about the status of service of the complaint upon the defendants. The Superior Court docket further reflects that, in February 2009, service was effectuated upon three of the defendants. Subsequently, in March 2009, writs were returned *non est* as to the additional defendants, who were either no longer working at the prison or could not be identified.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.³

(4) There is no basis for the issuance of a writ of mandamus in this case. The Superior Court docket reflects that service already has been attempted or effectuated on the defendants named in Biggins' complaint, rendering his petition moot. Biggins also has failed to demonstrate that the

² *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

³ *Id.*

trial court arbitrarily failed or refused to perform a duty owed to him. As such, Biggins' petition must be dismissed.

NOW, THEREFORE, IT IS ORDERED that Biggins' petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice